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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,519	02/10/2004	Edward McCoy	18525/04071	1060
24024	7590	01/20/2006	EXAMINER	
CALFEE HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114			SPAHN, GAY	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/775,519	Applicant(s) MCCOY, EDWARD	
	Examiner Gay Ann Spahn	Art Unit 3673	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


MICHAEL SAFARY
PRIMARY EXAMINER
ART UNIT 3673

Continuation of 3. NOTE: The amendments (both additions and deletions) to claim 1 would require further consideration and/or search. For example, proposed amendment to claim 1 now appears to disclose only one means involved with determining both particle size and fluid retention property.

On page 6, line 12 through page 7, line 25 of Applicant's "Response to Office Action Mailed November 1, 2005," Applicant argues against a 35 U.S. C. 112, second paragraph rejection given on page 6, line 1 through page 8, line 7 of the examiner's Office Action mailed on 01 November 2005 and made final. The examiner disagrees with Applicant's arguments that the specification provides support for the recitation of "means for inserting said drainage members into said layered soil profile at substantially regular intervals to form an array." The Applicant must state with particularity what structure constitutes his "means for inserting said drainage members into said layered soil profile at substantially regular intervals to form an array." If the drainage member is a fiberglass rope, is Applicant considering the "means for inserting said drainage member into said layered soil profile at substantially regular intervals to form an array" to be: (1) the mechanical actuator such a hydraulic ram that creates the pilot hole; (2) the small diameter wire, plastic or wooden dowel which provides the stiffening support; or (3) both the mechanical actuator and the stiffening support? If the drainage member is a fiberglass tape, is Applicant considering the "means for inserting said drainage member into said layered soil profile at substantially regular intervals to form an array" to be: (1) the thin but reinforced metal plate; (2) the mechanical actuator used to drive the plate downward; or (3) both the plate and the mechanical actuator? Applicant's proposed amendment would only serve to amplify any question as to what is being claimed as the proposed amendment to claim 1 appears to be altering the claimed means. Therefore, the examiner is maintaining her 35 U.S.C. 112, second paragraph rejection against line 12-13 of presently amended claim 1.